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Docket Management
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Motor Vehicle Safety; Disposition of Recalled Tires
Supplemental Notice of Proposed Rulemaking
67 FR 48852, July 26, 2002

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the supplemental notice of proposed rulemaking (SNPRM) regarding the disposition of recalled tires. Although the SNPRM raises several issues, Advocates comments only with respect to the need to render defective tires unsuitable for use at the time and place they are removed from service. Failure to make tires unsuitable for use permits their intentional or inadvertent reuse by the public.

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, P.L. 106-414 (Nov. 1, 2000), was enacted in the wake of numerous fatal crashes and injuries in vehicle rollover crashes that resulted from tread separation of certain Bridgestone/Firestone Inc. tires on Ford Explorers. The investigation and controversy surrounding the tire defect led to the recall of millions of Bridgestone/Firestone ATX, ATX II, and Wilderness AT tires. During that time anecdotal information surfaced that some tire repair shops were removing defective tires and then reselling the defective tires to an unwary public. Congress addressed this practice in the TREAD Act by requiring that tire manufacturers develop a plan "to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle," (TREAD Act section 7, codified at 49 U.S.C. § 30120(d)), and by prohibiting the resale of defective motor vehicle equipment that has not been remedied (TREAD Act section 8, codified at 49 U.S.C. § 30120(j)).[1]

[1] Defective equipment may also be sold if enforcement of the order requiring notification of a defect or noncompliance has been set-aside in a civil action.

NHTSA's initial proposed rule, 66 FR 65165 (Dec. 18, 2001), drew upon the facts and experience of the Bridgestone/Firestone tire recall in pointing out that large recalls tax the ability of manufacturers to promptly replace or retrieve defective tires. This resulted in large stockpiles of defective tires that were left in the hands of repair facilities and distributors, some of which were not manufacturer-owned or controlled outlets. As a result of the vast numbers of tires that were left in circulation for a prolonged period of time, the possibility that defective tires may have been intentionally or inadvertently resold to the public became a very real concern. Reports of such activities were widely circulated in the press at the time. Section 8 of the TREAD Act addresses the issue of intentional resale of defective or noncompliant recalled tires. It does not, however, prevent the problem of inadvertent resale of defective tires.

Section 7 of the TREAD Act requires manufacturers to include in their remedy programs a plan for preventing replaced, presumably defective tires from being resold. The statute does not distinguish between intentional and inadvertent resale. However, the statute limits the scope of the manufacturer plan only to the extent reasonably within the control of the manufacturer. This appears to limit the burden on manufacturers by not making them responsible for a plan that prevents the resale of all defective tires in the stream of commerce, but only for those over which the manufacturers can be said to have "within their control." Thus, such plans could be expected to cover tires in manufacturer production facilities and warehouses as well as those in the possession of manufacturer owned or operated sales outlets and distributorships; however this responsibility for a plan would not apply to tires beyond the direct control of the manufacturer, such as those in non-manufacturer outlets, at vehicle manufacturer production facilities, and tires already mounted on vehicles at dealerships or owned by consumers.[2]

NHTSA has authority both under the TREAD Act and under the National Highway and Motor Vehicle Safety Act, codified at 49 U.S.C. §§ 30101 *et seq.*, to regulate the disposition of defective equipment, including tires. The agency must balance the need for public safety and the assurance that unsafe tires will not be resold, against the interest of manufacturers in recovering recalled tires at a central facility in order to effectively distinguish between defective and non-defective tires. In light of the Bridgestone/Firestone experience, Advocates agrees with the agency's position that public safety in immediately preventing the resale of defective tires outweighs manufacturer concerns regarding efficiency, logistics, and the potential resale of non-defective tires.

In fact, the agency rule requiring that recalled defective tires should be rendered unsuitable for resale should apply to all tire replacement outlets and facilities, not just those within reasonably within the control of the manufacturer and subject to the

[2] The phrase "control of the manufacturer" could be interpreted to also include tires at authorized dealerships and outlets as well as at other facilities which the manufacturer neither owns nor operates but with which the manufacturer has a contractual relationship.

manufacturer plan required under section 7 of the TREAD Act. Removing defective tires from the stream of commerce is essential to public safety. The only sure way to protect the public and prevent inadvertent resale is to physically damage the tire so that it is incapable of reuse. The best time to make a tire unfit for reuse is at the time a technician has determined that the tire is defective and subject to recall. This is true regardless of whether the tire replacement occurs at a manufacturer-owned and operated facility or elsewhere. Therefore, under its inherent authority to regulate defective motor vehicle equipment, NHTSA should require that all tire outlets and repair shops that remove recalled tires, not just those tire outlets and repair shops that are "reasonably within the control of the manufacturer" and subject to a section 7 tire recall plan, must damage the tires to prevent their reuse.

Advocates finds no merit in the pragmatic arguments raised by the Rubber Manufacturers Association (RMA) in comments on the initial proposed rule. First, RMA urges NHTSA to adopt the view that if a manufacturer requires all recalled tires to be returned to the manufacturer, the manufacturer would not be required to file a plan addressing how to prevent resale of the defective tires or the disposal of those tires as required under section 7 of the TREAD Act. RMA comments dated May 9, 2002, p. 1, DOT docket no. NHTSA-2001-10856. According to RMA, only if a manufacturer chooses to allow tire dealers and distributors to deal with the recalled tires themselves would the manufacturer file an "exception plan" regarding the recall. *Id.* This suggestion is clearly at odds with the plain meaning of the statute that requires a plan to prevent resale of defective tires that are reasonably within the control of the manufacturer. Advocates understands the provision to mean that a manufacturer must file a plan addressing how to prevent the resale of defective tires at manufacturer production facilities and warehouses as well as those in the possession of manufacturer owned or operated sales outlets and distributorships. The statutory language does not distinguish between types of recalls based on whether the manufacturer uses a central facility to conduct the recall or permits outlets and dealerships to dispose of the recalled tires.

Second, NHTSA's proposal requiring replaced defective tires to be immediately rendered unsuitable for use does not entail any greater inefficiency. The agency's proposal requires manufacturers to select a simple, effective means to ensure that resale and reuse is not possible and further requires that this action take place on the same day the tire is replaced. Thus, there is no delay in either replacement of the tire for consumers or in shipment of the tire to the manufacturer if that is part of the manufacturer's disposal plan. This procedure does not increase the number of entities involved in the recall process nor does it complicate the recall. Only the tire outlet and the manufacturer are involved. Moreover, even the RMA proposes that there will be cases in which the manufacturer decides not to recover the defective tires and, in those situations, its arguments about streamlining the recall process do not apply. Having two types of recalls, one with section 7 plans and one without, even if this option were legal, would create confusion over whether the manufacturer or the tire outlets and replacement facilities had responsibility for preventing the resale of tires in any specific recall, and

inevitably would lead to the reuse of defective tires, the precise abuse that the statutory provision was designed to prevent.

Finally, Advocates is perplexed over the assertion that tire outlets and distributors do not have the necessary expertise to inspect, sort and destroy tires containing defects. RMA comments at p. 1. The manufacturer plan, and the proposed requirement to render tires unsuitable for resale, apply to tire facilities that are reasonably within the control of the manufacturer. While this can refer to different types of "manufacturers" including entities such as tire manufacturers, retail stores with "house" tire brands, and vehicle manufacturers, in each case the outlets that perform the work are owned, operated, or authorized by the manufacturer. Such facilities often require employee training in the identification and handling of tires. In addition, tire manufacturers frequently assert in seeking determinations of inconsequential noncompliance involving tire marking or labeling issues, that mechanics and repair shop personnel (in general, not necessarily just those owned and operated by the particular manufacturer), are trained and experienced at properly identifying tire markings and making appropriate decisions regarding tire selection.

Accordingly, Advocates does not believe that it is beyond the capability of tire repair and replacement facility personnel to properly identify recalled tires. Furthermore, we tend to agree with the agency that "[m]ost tires that are recalled are unrepairable, and therefore most are replaced rather than repaired." 66 FR 65166. In any event, we agree with the agency's proposed rule to strike a balance firmly on the side of ensuring public safety. To the extent that tire manufacturers are concerned about recovering tires mistakenly replaced as defective that are not part of the recall, or are not actually defective, they can provide the tire enterprises within their control more careful directions and training regarding the tires covered in each particular recall.

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